TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1909

No. 187

ROBERT JACKSON, PLAINTIFF IN ERROR,

vs.

GEORGE E. EMMONS AND J. PAUL SMITH.

IN ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

FILED NOVEMBER 3, 1909.

(17,137.)

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SUPREME COURT OF THE UNITED STATES.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JUNE 15, 1899.

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In the Court of Appeals of the District of Columbia

ROBERT JACKSON, Appellant,
vs.
GEORGE E. EMMONS and J. PAUL SMITH. } No. 814.

a Supreme Court of the District of Columbia.

ROBERT JACKSON
v.
GEORGE E. EMMONS and J. PAUL SMITH. } No. 38509. At Law.

UNITED STATES OF AMERICA, *District of Columbia,* } *ss:*

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Declaration and Notice to Plead.*

Filed Aug. 3, 1895.

In the Supreme Court of the District of Columbia, the 3rd Day of August, 1895.

ROBERT JACKSON, Plaintiff,
vs.
GEORGE E. EMMONS and J. PAUL SMITH, Defendants. } At Law. No. 38509.

The plaintiff sues the defendants for that the said defendants, on the 15th day of July, A. D. 1892, and continuing on divers other days and at divers other times between said day and the first day of October, in said year 1892, on ground bordering on 25th street northwest, in the city of Washington, in said District, unlawfully, knowingly, and wantonly blasted and caused to be blasted, by means of gunpowder or other explosive matter, pieces of rock from rocky formations on said ground, and by such blasting unlawfully and forcibly, with great and dangerous violence, threw large and heavy pieces of said rocky formation, from time to time, into the premises on said street, and near said ground occupied and held by said plaintiff under a yearly ground rent, with other rights and privileges, and against the house and habitation on said premises, which house was and is owned by said plaintiff, and was used and

occupied during said period by said plaintiff and his family as a dwelling.

And by reason of such throwing of said pieces the said house was greatly broken and injured, the family of plaintiff terrified and endangered in life and limb, and such house and prem-
2 ises rendered unsafe for man or beast to stay in while such blasting was continued.

And on the 21st day of July, in the year 1892 aforesaid, the said defendants, in continuing said blasting, unlawfully and wantonly and with gross negligence of the safety and rights of said plaintiff and his family and habitation, placed and caused to be placed in said rocky formations an excessive and very dangerous blast, the explosion of which threw with great force a heavy and large piece of rock into said premises of plaintiff, which were on the opposite side of said street from said blasting, and which piece of rock knocked plaintiff's wife down, sever-ly injuring her and rendering one of her arms useless a long time; and on the 6th (sixth) day of August, in the year 1892 aforesaid, the said defendants, in continuing said blasting, unlawfully and wantonly, and while they were personally present and directing said blasting, and with gross and wilful negligence and disregard of the safety of plaintiff's said habitation and family, placed and caused to be placed in said rocky formations an excessive and very dangerous blast, the explosion of which by said defendants' orders threw with great force a heavy and large piece of rock into said premises of plaintiff and against his said habitation, the said piece of rock going clear through the said house of plaintiff, tearing and breaking away the weather-boarding and plastering of the outside walls, jarring and throwing the said house out of position, shattering the glass in the windows, and otherwise greatly injuring the same and putting said plaintiff to great expense to repair such damage, as far as could be repaired, he paying $30 for plastering, $18.21 for lumber, $16 for car-
3 penter's work, besides other expenses plaintiff paid; and other wrongs and trespasses the said defendants then and there, between said 15th July and 1st October, did to the said plaintiff; all of which wrongs herein mentioned were to the great damage of said plaintiff; wherefore he saith he is and was injured and damaged to the value of six thousand dollars, and therefore he brings suit for such, with costs; and the plaintiff claims $6,000 damages, besides costs.

J. J. WATERS,
Attorney for Plaintiff.

The defendants are to plead hereto on or before the twentieth day, exclusive of Sundays and legal holidays, occurring after the day of the service hereof; otherwise judgment.

J. J. WATERS,
Att'y for Plaintiff.

4 *Pleas.*

Filed Sep. 14, 1895.

In the Supreme Court of the District of Columbia.

ROBERT JACKSON
vs.
GEORGE E. EMMONS, J. PAUL SMITH. } Law. No. 38509.

1. And now comes the said defendants and for plea say that they are not guilty in manner and form as plaintiff in and by his said declaration hath alleged.

2. And for a further plea said defendants say that the cause of action in said declaration set forth did not accrue within three years before the bringing of this action.

WM. A. McKENNEY,
Attorney for Defendants.

Joinder of Issue.

Filed Sep. 23, 1895.

In the Supreme Court of the District of Columbia, the 23rd Day of September, 1895.

ROBERT JACKSON, Plaintiff,
vs.
GEORGE E. EMMONS and J. PAUL SMITH, Defendants. } No. 38509. At Law, Docket No. 42.

The plaintiff joins issue on the defendants' pleas.

5 J. J. WATERS,
Attorney for Plaintiff.

To Wm. A. McKenney, Esq., attorney for defendants.

Service of copy of above acknowledged this — day of ——, 189–.

——,
Attorney for —.

Supreme Court of the District of Columbia.

WEDNESDAY, *December* 8, 1897.

Session resumed pursuant to adjournment, Justice Cole presiding.

* * * * * * *

ROBERT JACKSON, Plaintiff,
vs.
GEORGE E. EMMONS and J. PAUL SMITH, Defendants. } At Law. No. 38509.

Now comes here as well the plaintiff, by his attorney, J. J. Waters, as the defendants, by their attorney, Wm. F. Mattingly, and a jury

of good and lawful men of this District, to wit, Rob't L. Flynn E. F. Riggs, J. W. Selby, Wm. H. Joice, Beuson Sutton, Jno. F. Speicer, John Donegan, H. M. Armistead, Chas. B. Hough, Wm. Reynolds, John M. Laskey, and Harry C. Given, who, being duly sworn
6 to try the issue above joined, after a partial hearing of the case the plaintiff, by leave of court, withdraws a juror, and the remaining jurors are discharged from further consideration of the case, with leave to amend his declaration as advised within twenty days, and case is continued for the term.

Defendants' Motion that Plaintiff be Required to Pay Their *Costs.*

Filed Dec. 10, 1897.

In the Supreme Court of the District of Columbia.

ROBERT JACKSON
vs.
GEORGE E. EMMONS and J. PAUL SMITH. } Law. No. 38509.

And now come the defendants, by Wm. F. Mattingly, their attorney, and move the court to amend the order herein continuing the case by adding thereto that the plaintiff be, and he is hereby, required to pay to the defendants their costs, to be taxed by the clerk.

WM. F. MATTINGLY,
Attorney for Defendants.

WASHINGTON, D. C., *December 9th*, 1897.

Mr. J. J. Waters, attorney for plaintiff.

DEAR SIR: You will please take notice that I will request
7 action by the court on the motion, of which the above is a copy, on Friday, the 17th inst., at the opening of the court or as soon thereafter as counsel can be heard.

Yours respectfully, WM. F. MATTINGLY,
Att'y for Defendants.

Supreme Court of the District of Columbia.

FRIDAY, *January* 7, 1898.

Session resumed pursuant to adjournment, Justice Cole presiding.

* * * * * * *

ROBERT JACKSON, Plaintiff,
vs.
GEORGE E. EMMONS ET AL., Def'ts. } At Law. No. 38509.

So much of the order heretofore passed herein limiting the plaintiff's time to amend is hereby rescinded; and upon hearing defendants' motion to require the plaintiff to pay costs, it is considered that the plaintiff have leave to amend his declaration as advised within twenty days from this date, and that he pay the costs of the term in which a juror was withdrawn.

8 *Defendants' Motion to Dismiss Suit, &c.*

Filed Mar. 8, 1898.

In the Supreme Court of the District of Columbia.

ROBERT JACKSON
vs.
GEORGE E. EMMONS ET AL. } No. 38509. Law.

And now comes the defendants, by William F. Mattingly, their attorney, and, showing unto the court from the record herein and statement of plaintiff's attorney hereto annexed that the plaintiff has not paid the costs nor amended his declaration herein, *and* move the court to dismiss this suit or to take such other action in the premises as may be lawful and proper.

WM. F. MATTINGLY,
Attorney for Defendants.

Mr. J. J. Waters, Esq., attorney for plaintiff, # 1225 31st St. N. W., city:

You will please take notice that on Friday next, the 11*st* instant, at the opening of circuit court No. 1, or as soon thereafter as counsel can be heard, I will request the action of the court on the motion of which the foregoing is a copy.

WM. F. MATTINGLY,
Attorney for Defendants.

March 8, 1898.

9 Filed Mar. 8, 1898.

1225 31ST STREET, *Jan.* 27, 1898.

Wm. F. Mattingly, Esq., att'y for Mr. Geo. E. Emmons, &c.:

We intended in good faith to change or "amend" our declaration in the case of Jackson *v.* Emmons & Smith, so as to avoid unnecessary appeals, but the "amendment" since made to the leave given us (at your request), compelling us to pay unexpected costs, induces us to elect not to amend now, especially as on further investigation we are confirmed in the opinion that Jackson is the legal owner of the house he complains of as damaged; so please notice that we stand upon our declaration now as originally filed.

Very resp'y yours,
J. J. WATERS,
Att'y for Rob't Jackson.

(On envelope:) Jos. J. Waters, attorney-at-law, 1225 31st street (Georgetown), Washington, D. C. Return if not delivered in five days. (Stamps.)

WILLIAM F. MATTINGLY, Esq., *Att'y-at-law,*
435 *Seventh St. N. W.,*
Washington, D. C.

10 Supreme Court of the District of Columbia.

FRIDAY, *March* 25, 1898.

Session resumed pursuant to adjournment, Justice Cole presiding.

* * * * * * *

ROBERT JACKSON, Plaintiff,
vs.
GEORGE E. EMMONS and J. PAUL SMITH, Def'ts. } At Law. No. 38509.

The plaintiff, though granted leave to amend his declaration on the 7th day of January, 1898, within twenty days, and that he pay the costs of the October term, 1897, has not so amended or paid said costs, and it appearing upon the records that the plaintiff declines to so amend, therefore the defendants move the court to dismiss this suit, which is granted; therefore it is considered that the plaintiff take nothing by his suit, and that the defendants go thereof without day and recover against the plaintiff their costs of defense, to be taxed by the clerk, and have execution thereof. Penalty of bond on appeal fixed at $50.00.

11 *Motion to Vacate Order of Dismissal and Affidavit.*

Filed Mar. 26, 1898.

In the Supreme Court of the District of Columbia, Holding Circuit Court Term No. 1, This 26 March, 1898.

ROBERT JACKSON, Plaintiff,
vs.
GEORGE E. EMMONS and J. PAUL SMITH, Defendants. } No. 38509 At Law.

The plaintiff hereby moves said court to vacate the order dismissing his above-designated suit, made the 25th March, 1898, and to restore said case to the trial calendar of said court for trial, and for reasons therefor assigns the following:

1. Because plaintiff had a right to elect not to amend his declaration according to leave granted in said case, especially as the defendants had said court to burden said plaintiff with their costs after he had elected to amend, and as plaintiff's declaration was good, his testimony at the trial in this suit consistent with said declaration, and the election to amend his declaration so as to suit the rulings of the court on the evidence given at said trial was made simply to avoid multiplying appeals.

2. Because the court erred in dismissing plaintiff's case on such a motion as that made by defendants in this suit for that purpose.

3. Because plaintiff's counsel was absent at the hearing of said motion of defendants, as he had not been informed that the
12 day for hearing such motion had been latterly fixed for 25th March, 1898, although before fixed for 26th March, 1898, as

defendants' counsel knew plaintiff's counsel so understood when he attended court to answer said motion on 12th March, 1898; and plaintiff refers to his declaration filed herein, the motions of defendants as to costs on amendment and to dismiss plaintiff's case, the minute entries as to jury trial and as to allowances to plaintiff to amend, and the affidavit attached hereto as parts hereof and in support thereof.

J. J. WATERS,
Att'y for Robert Jackson, Plaintiff.

Affidavit.

DISTRICT OF COLUMBIA, *To wit:*

Personally appeared before the subscriber, clerk of the supreme court of the District aforesaid, Joseph J. Waters, who, being duly sworn, deposes and says:

"I am counsel for plaintiff in the case of Jackson *v.* Emmons, above stated, and know more of the proceedings in court than my client, who is an illiterate man, and when defendants' counsel and affiant attended court on account of defendants' motion to dismiss plaintiff's case, on 12th March, 1898, they were informed by said court that certain motions, including defendants', would be heard that day two weeks from then, and this affiant so told defendants' counsel, and affiant did not know that the day was changed to a day earlier until after plaintiff's case was dismissed in his absence, so that he was not heard thereon.

"The declaration of plaintiff in such case was never demurred to, but at the trial by jury of the case on 8th Dec., 1897, Robert
13 Jackson, being duly sworn as his own witness, testified that he was the plaintiff in the case, and that the lot where his house was, which hou e was the subject of complaint, belongs to Mr. Elias Travers; to which defendants' counsel objected on ground that title to land could not be proved that way, but plaintiff's counsel said he was not going to prove title to land, but to a house. Then witness continued and said Mr. Travers let him have the lot on an agreement, made in or about 1869, not in writing, that he, Jackson, should pay twelve dollars a year for it, and that when he had paid five hundred dollars he, Mr. Travers, would give him a deed for it, and that he had paid all his rent from then until the end of 1897.

"That the house on the said land belonged to him, Jackson, and that he put it there by consent of Mr. Travers, and that it cost him $300 or $400, as he had receipted bills to show.

"To this evidence about the house defendants' counsel at once objected on ground that it contradicted plaintiff's declaration, as the house in law belonged, as part of the lot, to the owner of the ground, Mr. Travers; which objection Mr. Justice Cole, holding said court for such trial, sustained and ruled out plaintiff's said evidence and informed plaintiff's counsel that, as the testimony contradicted his declaration, he could not go on with the trial.

"Thereupon affiant, wishing to avoid several appeals and considering that the objection went only to part of his case, asked leave to amend his declaration so as to drop the question of ownership of the house and to claim more definitely for the injuries to the lawful occupation of it by plaintiff, and to this request no objection was made nor any demand for any costs set up by defendants; so such leave was granted.

14 "Afterwards, before plaintiff's time to amend had expired, defendants moved to compel him to pay costs of the past term, being $19.70, as given by the clerk of the court, as a condition of amending, and affiant wished time to see if his client could comply with this when required by the court, so as to avoid controversy, but, finding his client could not comply in time, as said client is very poor and a colored laborer, and that it was not necessary to his case to amend, affiant elected not to do so, and to avoid misunderstanding so informed defendants' counsel by the letter he exhibits with his motion to dismiss."

J. J. WATERS.

Sworn to and subscribed before me this 26th day of March, A. D. 1898.

JOHN R. YOUNG, *Clerk.*

15 Supreme Court of the District of Columbia.

WEDNESDAY, *March* 30, 1898.

Session resumed pursuant to adjournment, Justice Cole presiding.

* * * * * * *

ROBERT JACKSON, Pl'ff,
vs.
GEORGE E. EMMONS ET AL., Def'ts. } At Law. No. 38509.

Upon hearing the motion of plaintiff to vacate and set aside the judgment entered herein on the 25th day of March, 1898, it is considered that said motion be, and the same hereby is, overruled. Penalty of bond for costs on appeal is fixed at $50.00.

16 *Order for Appeal and Citation.*

Filed Apr. 13, 1898.

In the Supreme Court of the District of Columbia, the 13th Day of April, 1898.

ROBERT JACKSON, Plaintiff,
vs.
GEORGE E. EMMONS and J. PAUL SMITH, Defendants. } At Law. No. 38509.

The clerk of said court will please enter an appeal, which is hereby taken by said plaintiff, to the Court of Appeals of said District from the order and judgment in above case on 25th March, 1898, dis-

missing plaintiff's suit with costs, and from the order on 30th March, 1898, in same case, refusing plaintiff's motion to vacate said previous order and judgment.

Also please issue citation to said defendants to appear in said Court of Appeals — to said appeal.

JOSEPH J. WATERS,
Attorney for Plaintiff and Appellant.

17 In the Supreme Court of the District of Columbia.

ROBERT JACKSON
vs.
GEORGE E. EMMONS and J. PAUL SMITH. } At Law. No. 38509.

The President of the United States to George E. Emmons and J. Paul Smith, Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein under and as directed by the rules of said court, pursuant to an appeal filed in the supreme court of the District of Columbia on the 13th day of April, 1898, wherein Robert Jackson is appellant and you are appellees, to show cause, if any there be, why the judgment rendered against the said appellant should not be corrected and why speedy justice should not be done to the parties in that behalf.

Seal Supreme Court of the District of Columbia.

Witness the Honorable Edward F. Bingham, chief justice of the supreme court of the District of Columbia, this 14 day of April, in the year of our Lord one thousand eight hundred and ninety-eight.

JOHN R. YOUNG, *Clerk.*

Service of the above citation accepted this 14th day of April, 1898.

WM. F. MATTINGLY,
Attorney for Appellees.

18 *Memorandum.*

Appeal bond filed April 15, 1898.

Order for Transcript of Record for Appeal.

Filed May 13, 1898.

In the Supreme Court of the District of Columbia.

ROBERT JACKSON
vs.
GEO. E. EMMONS and J. PAUL SMITH. } No. 38509. Law.

The clerk of the court will please make up a certified copy of the record in the above case according to the rules of the Court of Appeals, and to consist of the following:

Declaration, filed Aug. 3, 1895.
Pleas, filed Sep. 14, 1895.
Joinder of issue, filed Sep. 23, '95.
Entry in full from Law Min. 37, p. 197, of the impanelling of jury, withdrawal of juror, and leave to amend.
Motion to compel plaintiff to pay costs (omitting notice), filed Dec. 10, '97.
Entry in full from Law Min. 37, p. 250, of order amending order of Dec. 8, '97, in above case extending time to amend and ordering plaintiff to pay costs of term.
Motion to dismiss plaintiff's case, with letter, filed Mar. 8, 1898.
Memoranda of costs in case for Oct. term, 1897 ($19.70).
19 Entry in full from Law Min. 37, p. 385, of order dismissing case, with judgment for defendants.
Motion to vacate order of dismissal, and affidavit, filed 26 March, 1898.
Entry in full of March 30, 1898, Law Min. 37, p. 394, overruling above motion.
Order for appeal in full, filed April 13, 1898.
Memorandum of appeal bond, approved and filed Ap'l 15, '98.
Citation and acknowledgment of service.

J. J. WATERS,
Att'y for Rob't Jackson, Appellant.

20 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia,* } *ss:*

I, John R. Young, clerk of the supreme court of the District of Columbia, do hereby certify that the foregoing pages, numbered from 1 to 19, inclusive, are true copies of originals in cause No. 38509, at law, wherein Robert Jackson is plaintiff and George E. Emmons *et al.* are defendants, as the same remains upon the files and records of said court.

Seal Supreme Court of the District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 21st day of May, A. D. 1898.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 814. Robert Jackson, appellant, *vs.* George E. Emmons and J. Paul Smith. Court of Appeals, District of Columbia. Filed May 24, 1898. Robert Willett, clerk.

WEDNESDAY, *October 5th, A. D.* 1898.

ROBERT JACKSON, Appellant,
vs.
GEORGE E. EMMONS and J. PAUL SMITH. } No. 814.

The argument in the above-entitled cause was commenced by Mr. J. J. Waters, attorney for the appellant, and was continued by Mr. Wm. F. Mattingly, attorney for the appellees, and was concluded by Mr. J. J. Waters, attorney for the appellant.

ROBERT JACKSON, Appellant,
vs.
GEORGE E. EMMONS and J. PAUL SMITH. } No. 814.

Opinion.

Mr. Justice MORRIS delivered the opinion of the court:

The appellant, Robert Jackson, instituted a suit at common law in the supreme court of the District of Columbia against the appellees, Emmons and Smith, as defendants, for trespass upon his property. After pleas filed and issue joined, the cause came on for trial before a jury. At the trial the plaintiff, apprehending a verdict against him, asked leave, which was granted by the court, to withdraw a juror, to have the jury discharged from further consideration of the case, and to be allowed to amend his declaration within twenty days; and the cause was thereupon continued for the term. Two days after this the defendants moved for an amendment of the order of the court to the effect that the plaintiff should be required to pay the costs of the term. This amendment the court directed to be made.

Subsequently, on the total failure of the plaintiff either to pay the costs or to amend his declaration within the time limited or at all, the defendants moved the court for a dismissal of the suit. The court granted the motion and dismissed the suit. The plaintiff then moved to vacate the order of dismissal, and with his motion and in support of it filed an affidavit, the pertinency of most of which is not apparent. But the court overruled his motion, and he then appealed from the order of dismissal to this court, as also from the order refusing his motion to vacate the order of dismissal.

There are four assignments of error, which we quote in the language of the appellant's brief:

"The lower court erred in the following instances:

"1st. In ruling that the ownership of plaintiff's house went with the ground, and that he could not therefore verbally prove himself the owner.

"2d. In dismissing plaintiff's suit because he elected not to avail himself of leave to amend his declaration, especially when an *ex post facto* condition was attached against his will.

"3d. In refusing to vacate the order of final dismissal upon motion and proper showing therefor.

"4th. In allowing defendants to set up a claim for costs after leave had been granted plaintiff to amend unconditionally without objection by such defendants."

The first of these assignments is wholly unjustified by the record. The only ground for it is a portion of the affidavit to which we have referred as having been filed by the appellant in support of his motion to vacate the order of dismissal, and wherein irrelevant reference is made to the rulings of the court at the abortive trial before the jury. That trial was a nullity. It resulted in nothing. It is as if it had never been had, and it is wholly improper to bring the rulings then made, and which resulted in nothing, to this court upon the present appeal. This assignment cannot be considered by us.

The other assignments simply seek to raise the question whether the court below had the right to impose costs when and as it did, and to dismiss the plaintiff's suit after he had persistently refused either to amend his declaration or to pay the costs; and we do not see that there is any reasonable ground to doubt the power and the right of the court in the premises. Whether for the failure merely to amend the court should have dismissed the suit, it is unnecessary to determine; although such failure under the circumstances might justify serious censure. The request to withdraw a juror and to discharge the jury because a declaration is found to be imperfect, and the grant of such request upon the condition that the declaration will accordingly be amended, coupled with a subsequent refusal without just cause to make the amendment and the purpose necessarily incident thereto to go to another trial by jury without amendment, might justly be regarded as a juggling with the administration of justice and a fraud upon the rights of other parties, for which a dismissal would be eminently proper, if such course were not pursued, as we believe it was in this case, in good faith. But whether pursued in good faith or in bad faith, it is a practice that cannot be allowed.

But the dismissal of the suit was evidently based, not so much on the refusal to amend as on the refusal to pay costs. The appellant's claim is to the effect that the court, after the discharge of the jury and the grant of leave to amend, had no right to amend the order by requiring him to pay the costs of the term.

But the act of Maryland of 1785, chapter 80, section 4, specifically provides that in such cases such costs shall be allowed as the court shall think just. The law itself imposes the condition that costs shall be paid by the party proposing to amend, and it might well be questioned whether the court could refuse to allow them upon the motion of the party entitled to them. Nor is it apparent why they should not be allowed at any time when demand is made for the allowance. Upon refusal to pay, dismissal of the suit is the proper and perhaps now the only remedy left to the party aggrieved.

We find no merit in the appeal, and the order appealed from will therefore be *affirmed with costs. And it is so ordered.*

TUESDAY, *October* 18*th*, *A. D.* 1898.

ROBERT JACKSON, Appellant,
vs.
GEORGE E. EMMONS and J. PAUL SMITH. } No. 814, October Term, 1898.

Appeal from the supreme court of the District of Columbia.

This cause came on to be heard on the transcript of record from the supreme court of the District of Columbia and was argued by counsel. On consideration whereof it is now here ordered and adjudged by this court that the order of the said supreme court in this cause be, and the same is hereby, affirmed with costs.

Per MR. JUSTICE MORRIS.

October 18, 1898.

THURSDAY, *October* 20*th*, *A. D.* 1898.

ROBERT JACKSON, Appellant,
vs.
GEORGE E. EMMONS and J. PAUL SMITH. } No. 814.

On motion of Mr. J. J. Waters, attorney for the appellant in the above-entitled cause, it is ordered by the court that a writ of error to remove said cause to the Supreme Court of the United States be, and the same is hereby, allowed on giving bond in the sum of three hundred dollars.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the Court of Appeals of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court of Appeals, before you or some of you, between Robert Jackson, appellant, and George E. Emmons and J. Paul Smith, appellees, a manifest error hath happened, to the great damage of the said appellant, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 21st day of October, in the year of our Lord one thousand eight hundred and ninety-eight.

Seal Court of Appeals, District of Columbia.

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

Know all men by these presents that we, Robert Jackson, of Washington city, District of Columbia, as principal, and Dr. James F. R. Appleby, of same place, as surety, are held and firmly bound unto George E. Emmons and J. Paul Smith, of the same city and District, in the full and just sum of three hundred dollars to be paid to the said George E. Emmons and J. Paul Smith or their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 25th day of October, in the year of our Lord one thousand eight hundred and ninety-eight.

Whereas lately, at a Court of Appeals of the District of Columbia, in a suit depending in said court between said Robert Jackson, as plaintiff and appellant, and said George E. Emmons and J. Paul Smith, as defendants and appellees, a judgment was rendered against the said Robert Jackson for costs, and the said Robert Jackson having appealed to the Supreme Court of the United States in such suit and having obtained a writ of error thereto and filed a copy thereof in the clerk's office of the said court to reverse the judgment and decision in the aforesaid suit, and a citation directed to the said George E. Emmons and J. Paul Smith, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington, within 30 days from the date thereof:

Now the condition of the above obligation is such that if the said Robert Jackson shall prosecute his said appeal to effect and answer all damages and costs if he shall fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

ROBERT his x mark. JACKSON. [SEAL.]

J. F. R. APPLEBY. [SEAL.]

Signed, sealed, and delivered in the presence of—

EDITH R. APPLEBY.
J. J. WATERS.

Surety satisfactory.
W. F. MATTINGLY,
For Def'ts in Error.
10, 26, '98.

Approved by—
R. H. ALVEY, *Ch. Justice.*

[Endorsed:] Robert Jackson, appellant, *vs.* George E. Emmons *et al.* Bond on writ of error to Supreme Court U. S. Court of Appeals, District of Columbia. Filed Oct. 28, 1898. Robert Willett, clerk.

UNITED STATES OF AMERICA, *ss:*

To George E. Emmons and J. Paul Smith, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the Court of Appeals of the District of Columbia, wherein Robert Jackson is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Richard H. Alvey, Chief Justice of the Court of Appeals of the District of Columbia, this 28th day of October, in the year of our Lord one thousand eight hundred and ninety-eight.

R. H. ALVEY,
Chief Justice of the Court of Appeals of the District of Columbia.

Service accepted.
Octo. 28th, 1898.
WM. F. MATTINGLY,
For Def'd'ts in Error.

[Endorsed:] Court of Appeals, District of Columbia. Filed Oct. 28, 1898. Robert Willett, clerk.

Court of Appeals of the District of Columbia.

I, Robert Willett, clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages, numbered from 1 to 16, inclusive, contain a true copy of the transcript of record and proceedings of said Court of Appeals in the case of Robert Jackson, appellant, *vs.* George E. Emmons and J. Paul Smith, No. 814, October term, 1898, as the same remains upon the files and records of said Court of Appeals.

Seal Court of Appeals, District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this 29th day of October, A. D. 1898.

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

[Ten-cent U. S. internal-revenue stamp, cancelled 10, 29, '98. R. W.]

Endorsed on cover: Case No. 17,187. District of Columbia Court of Appeals. Term No., 157. Robert Jackson, appellant, *vs.* George E. Emmons and J. Paul Smith. Filed November 5, 1898.